



4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Chapter II

Proposed requirement--Migrant Education Program Consortium
Incentive Grant Program

AGENCY: Office of Elementary and Secondary Education,
Department of Education.

ACTION: Proposed requirement.

[CFDA Number 84.144F]

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes to change the maximum duration of grants awarded to State educational agencies (SEAs) under the Migrant Education Program (MEP) Consortium Incentive Grant (CIG) Program from two years to three years. We take this action to allow participating SEAs to have an additional year to conduct needed activities, evaluate their projects, and provide a final report addressing their success in completing project activities and achieving the objectives and outcomes that were established in their approved CIG program application.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Address all comments concerning this notice to:
Lisa Gillette, U.S. Department of Education, 400 Maryland
Avenue SW., Room 3E313, Washington, D.C. 20202-6135.

If you prefer to send your comments by e-mail, use the
following address: lisa.gillette@ed.gov. You must include
the term "CIG-Duration" in the subject line of your
electronic message.

FOR FURTHER INFORMATION CONTACT: Lisa Gillette.

Telephone: (202) 260-1426, or by e-mail:

lisa.gillette@ed.gov.

If you use a telecommunications device for the deaf
(TDD) or a text telephone (TTY), call the Federal Relay
Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments
regarding this notice.

We invite you to assist us in complying with the
specific requirements of Executive Orders 12866 and 13563
and their overall requirement of reducing regulatory burden
that might result from this proposed requirement. Please
let us know of any further ways we could reduce potential
costs or increase potential benefits while preserving the
effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 3E313, 400 Maryland Avenue, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The MEP, authorized in title I, part C, section 1301 et seq. of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6391 et seq.), is a State-operated and State-administered formula grant program. The MEP helps SEAs support high-quality and comprehensive educational programs that do two things: provide migratory children with appropriate educational and supportive services that address their special needs in a coordinated and efficient manner, and give migratory children the opportunity to meet the same challenging State

academic content and student academic achievement standards that all children are expected to meet.

One component of the MEP is the CIG program, authorized in section 1308(d) of the ESEA (20 U.S.C. 6398(d)). Through the MEP CIG program, the Department provides financial incentives to SEAs to participate in high-quality consortia that improve the interstate or intrastate coordination of migrant education programs by addressing key needs of migratory children who have their education interrupted.

Program Authority: 20 U.S.C. 6398.

Applicable Program Regulations: 34 CFR part 200, subpart C.

PROPOSED REQUIREMENT

This notice contains one proposed requirement.

Duration of Consortium Incentive Grants.

Background:

The Department published a notice of final requirements for the MEP CIG Program in the Federal Register on March 3, 2004 (69 FR 10110) (2004 Notice), and we have used these final requirements for CIG competitions since fiscal year (FY) 2004. The 2004 Notice contained basic requirements that govern CIG applications, established seven priorities that applicants must address,

established a two-tiered funding formula (based on the size of the SEA's MEP formula grant) to determine the amount of the award the Department will make to SEAs that belong to consortia selected for an award, and authorized participating SEAs to use these funds to augment their MEP formula grant award. We subsequently published a notice of final priority for the MEP CIG program in the Federal Register on March 12, 2008 (73 FR 13217), in which we added an eighth priority.

The 2004 Notice also established a project period of up to two years for grants awarded under the MEP CIG program. Grantees are required under the 2004 Notice and 34 CFR 75.118 and 75.590 of the Education Department General Administrative Regulations (EDGAR) to submit a performance report (through the consortium's lead State) toward the end of the first project year and a final summary evaluation report at the end of the second project year. These reports must address the participating SEAs' completion of activities and attainment of objectives of the approved consortium. We explained in the 2004 Notice that we would not conduct a new incentive grant competition in FY 2005 but would make second-year continuation funding contingent on the SEAs' substantial completion of first-year consortium activities and attainment of the outcomes

identified in the approved consortium application; the amount of second-year continuation funding was to be based on the same two-tiered formula described in the 2004 Notice. We have followed this process for the funding of second-year continuation awards since 2004.

The Department last awarded CIGs in FY 2012. Currently, 37 SEAs (out of a total of 47 SEAs that receive MEP formula grant program funds) participate in CIG program-funded consortia.

We are proposing to change the project period for several reasons. The 2004 Notice limited the MEP CIG awards to two years because they were intended to fund innovative pilot activities that grantees would put in place during the grant period, and then would continue with basic MEP formula grant funding provided under Title I, part C of the ESEA if the activities proved useful. However, based on our knowledge of the progress SEAs generally make on consortium projects, we believe that current grantees would benefit from a third year in which to work on and implement their CIG projects. In addition, although the two-year project period may sometimes be sufficient, it unnecessarily inhibits the Secretary's ability to establish a three-year project period for the CIG program where it is appropriate to do so. Increasing

the project period that the Secretary may establish for the CIG program by one year will permit the Secretary to exercise judgment about what period would best permit grantees to achieve results and obtain better data to conduct the needed evaluations of their projects.

Proposed Requirement—Duration of Incentive Grants:

The Secretary may provide a maximum project period of three years for grants awarded under the MEP CIG program. The Secretary may extend the current two-year project period of the FY 2012 grantees to three years as well as determine a project period for future competitions of up to three years.

For grants with a three-year project period, grantees must submit a performance report at the end of each project year and are eligible for a continuation award at the end of the first and second project years based on the two-tiered funding formula in the 2004 Notice. The second and third year's continuation funding is contingent on the grantee making substantial progress in performing the previous year's consortium activities and in attaining the outcomes identified in the approved consortium application. Grantees must submit their final summary evaluation report at the end of the third project year.

Final Requirement:

We will announce the final requirement in a notice in the Federal Register. We will determine the final requirement after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. We invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal

governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that

might result from technological innovation or anticipated behavioral changes."

We are issuing this proposed requirement only on a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 28, 2013

Deborah S. Delisle,
Assistant Secretary for Elementary and
Secondary Education.

[FR Doc. 2013-16021 Filed 07/02/2013 at 8:45 am;
Publication Date: 07/03/2013]